IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2110 of 2004
with
Civil Application No 8490 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATIONAL INSURANCE CO. LTD

Versus

YARABHAI HAMABHAI BHARVAD

Appearance:
1. First Appeal No. 2110 of 2004
MS MEGHA JANI for Appellant
MR NIRAV C THAKKAR for Respondent No. 1
RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 22/02/2005

ORAL JUDGEMENT

1. Instant appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act' for short), is directed against the order dated 17.9.2003 rendered below application Ex.7 in MACP No.929 of 1996 by the MACT

(Main), Nadiad by which the application filed by respondent No.1/original claimant under Section 140 of the Act under "No Fault Liability" principle claiming compensation of Rs.25,000/- for injuries in the nature of fracture on right tibia-fibula and resultant disability caused to him in a vehicular accident which has taken place on 20.12.1995 at about 12 Noon on Shirvania-Botad Road came to be allowed and thereby the appellant was directed to pay RS.25,000/- together with interest at the rate of 9% per annum jointly and severally with respondent No.2, owner of the vehicle.

2. As per the claim put forward by the claimant before the MACT (Main) Nadiad, the alleged incident has taken place on 20.12.1995 at about 12 Noon on Shirvania-Botad road. The claimant had hired a rickshaw tempo bearing registration No.GTS 9252, owned by respondent No.2 for loading plastic granules. The said rickshaw tempo turned turtle at the place of accident as a result thereof the claimant received injuries on his right leg and therefore he was shifted to Civil Hospital, Ahmedabad and he was treated as indoor patient as there was fracture of right tibia-fibula. As a result of the injuries, he sustained permanent partial disablement. The claimant therefore has filed claim petition under Section 166 of the Act for recovering compensation of Rs.8,00,000/= from the owner and insurance company of the offending vehicle.

In the said claim petition the claimant has also filed an application under section 140 of the Act for interim compensation of Rs.25,000/- which came to be allowed which has given rise to the present appeal.

3. Ms. Megha Jani, learned advocate of the appellant, has contended that for claiming interim compensation under section 140 of the Act, under No Fault Liability principle, the claimant has to produce the documents as required under section 231 (2) of the Gujarat Motor Vehicles Rules, 1989 ('the Rules' for short) alongwith the claim application. In instant case, there is no FIR produced on record. Therefore the Tribunal has misdirected itself in passing the impugned order which has resulted into miscarriage of justice. She therefore contended that the impugned award deserves to be quashed and set aide by allowing this appeal. She therefore urged to allow this appeal.

4. In counter submission, Mr. Nirav C Thakkar, learned advocate of respondent No.1/original claimant, has contended that it is true that there is no FIR

produced in instant case. However, the accident did take place and on 18.5.1996, i.e., after six months of the accident, Punjabhai Hamabhai Bharwad, wrote a letter to the District Superintendent of Police, Bhavnagar informing him about the accident and therefore the said letter can be treated FIR. In support of the aforesaid contention, he has also relied upon medical case papers to prove that the accident did take place and the claimant received injuries in the very accident. He also contended that provisions for filing an application under Section 140 of the Act for interim compensation is a benevolent piece of legislation enacted by the legislature in its wisdom in favour of the victims of the road accident and award passed below the application filed under Section 140 of the Act under No Fault Liability may not be normally interfered with. According to him, the main claim petition is still pending before the Tribunal for final adjudication. Therefore, the impugned award does not call for any interference in exercise of powers under Section 173 of the Act. He therefore contended that the appeal lacks merits and urged that the appeal deserves to be dismissed.

5. This Court has considered the submissions advanced by the learned advocates appearing for the parties, perused the averments made in the appeal, impugned judgment and award and the relevant documents produced by the learned advocates appearing for the parties and the statutory provisions contained under the Act and the Rules.

6. According to the claimant the alleged accident has taken place on 20.12.1995 at about 12 Noon on Shirvania-Botad road. On that day the claimant had hired a rickshaw tempo bearing registration No.GTS 9252, owned by respondent No.2 for loading plastic granules. The said rickshaw tempo turned turtle at the place of accident as a result of which the claimant received injuries on his right leg and therefore he was shifted to Civil Hospital, Ahmedabad and he was treated as indoor patient. As a result of the injuries, he sustained permanent partial disablement. The claimant therefore has filed claim petition under Section 166 of the Act for recovering compensation of Rs.8,00,000/= from the owner and insurance company of the offending vehicle. In the said claim petition the claimant has also filed an application under section 140 of the Act for interim compensation of Rs.25,000/- which came to be allowed which has given rise to the present appeal.

7. So far as the procedure to decide the application

under section 140 of the Act is concerned, there is no manner of doubt that the Tribunal has to follow the provisions prescribed under sub-rule (5) of Rule 231 of the Rules, which contemplates that the Tribunal shall follow the procedure of summary trial as contained in Chapter XXI of the Code of Criminal Procedure Code, 1973 and in the said procedure the claimant has to submit the following documents as per sub-rule (2) of Rule 231 of the Rules, alongwith the claim application:

(i) First Information Report;
(ii) Injury certificate or Post-mortem report in case of death;
(iii) Heirship certificate in case of death;
(iv) Certificate from the registering authority regarding ownership of the vehicle involved in the accident;
(v) Particulars of insurance of the vehicle involved in the accident.

8. In the instant case the claimant has not produced FIR. The claimant has relied upon the letter dated 18.5.1996 written by Punjabhai Hamabhai Bharwad to the District Superintendent of Police, Bhavnagar informing him about the occurrence of accident and injury certificate issued by the Civil Hospital. According to this court, when the summary procedure is prescribed to decide the application under Section 140 of the Act the Tribunal must confine itself to follow the sub-rule (2) of Rule 231 of the Rules in deciding the application filed under section 140 of the Act. If any of the documents prescribed under the said rule is missing then the Tribunal cannot pass interim award under section 140 of the Act. Since the alleged accident is denied by the insurance company, the same cannot be decided in summary trial as the same can be decided during the full-fledged trial which is only possible by leading evidence.

9. From the above facts it would be clear that the Tribunal has not followed the provisions of sub-rule (2) of Rule 231 of the Rules while deciding interim compensation application under section 140 of the Act.

10. In aforesaid view of the matter, this appeal deserves to be allowed by quashing and setting aside the impugned award.

11. For the foregoing reasons the appeal succeeds and accordingly it is allowed with no order as to costs. The impugned order dated 17.9.2003 passed by the MACT (Main) Nadiad, below application EX.7 in MACP No. 929 of 1996

is hereby quashed and set aside. It would be open for the claimant to prosecute the main claim petition which is filed under Section 166 of the Act for recovering compensation of Rs.8,00,000/- by leading all available evidence and the Tribunal shall decide the same in accordance with law uninfluenced by the fact that the interim order passed by it has been quashed and set aside by this Court in his appeal only on technical ground. The Tribunal shall decide the main claim petition i.e., MACP No. 929 of 1996 as expeditiously as possible and preferably on or before 31.12.2005.

12. Since the appeal is allowed and thereby the impugned award is quashed and set aside, the CA No.8490 of 2004 filed in the First Appeal praying to stay the impugned award does not assume any survival value and hence the same is disposed of with no order as to costs. Rule is discharged. Interim relief granted earlier shall stand vacated.

13. The amount of Rs.12,500/- deposited alongwith the appeal with the registry which has been transmitted to the Tribunal and any further amount deposited by the appellant before the Tribunal in compliance of the order dated 18.10.2004 passed by this Court in Civil Application No.8490 of 2004 shall be refunded to the appellant by the Tribunal.

R & P be sent back forthwith.

(A.M. Kapadia, J.)

(karan)